

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 92-0007

**APPROVAL OF LOCAL RULES FOR THE
THIRTEENTH COURT OF APPEALS**

ORDERED:

Pursuant to Rule 1(b) of the Texas Rules of Appellate Procedure, the Supreme Court approves the following local rules.

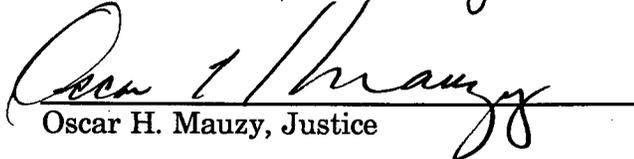
Local Rules for the Thirteenth Court of Appeals, dated June 18, 1991.

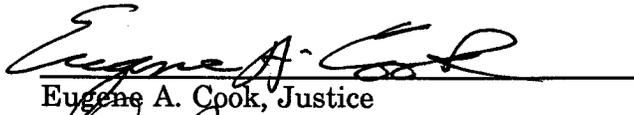
The approval of these rules is temporary, pending further orders of the Court.

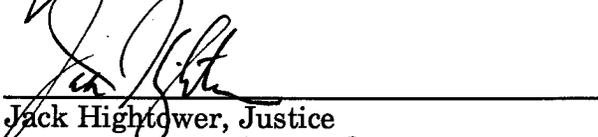
SIGNED AND ENTERED this 7th day of October, 1991.


Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice

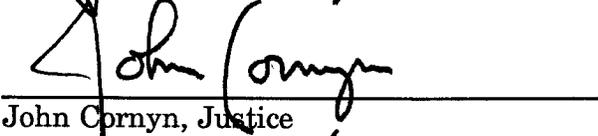

Oscar H. Mauzy, Justice

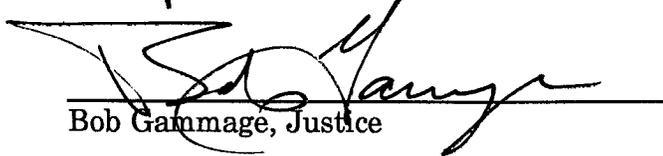

Eugene A. Cook, Justice


Jack Hightower, Justice


Nathan L. Hecht, Justice


Lloyd Doggett, Justice


John Cornyn, Justice


Bob Gammage, Justice



LOCAL RULES FOR THE THIRTEENTH COURT OF APPEALS

(CIVIL AND CRIMINAL)

These rules apply to both civil and criminal cases, unless otherwise specified, and are to serve as an addition to the procedures set forth in the Texas Rules of Appellate Procedure. Attorneys are directed to comply with the applicable provisions set forth below. These rules have been promulgated pursuant to Tex. R. App. P. 1(b) and have been prepared as an aid to all attorneys who practice before our Court. If the Rules of Appellate Procedure are amended, and as amended conflict with the rules below, then the Rules of Appellate Procedure will govern.

Pursuant to Tex. R. App. P. 6, correspondence or other communications relative to any matter before the Court must be conducted with the Clerk and shall not be addressed to or conducted with any of the justices or other members of the Court's staff.

The Court thanks the attorneys who practice before this Court for their cooperation.

I. APPEARANCE

Only attorneys of record will be allowed to appear before this Court to present documents and argue cases. A party may proceed pro se before this Court, but, if an attorney of record is designated, only that attorney will be allowed to proceed with the appeal. If an out-of-state attorney wishes to practice before this Court, a motion requesting leave to appear should be filed so that permission may be granted by the Court.

II. GENERAL PROVISIONS

Generally, a document is marked "received" rather than filed because there is some defect in the document or it is not timely filed. The Court will notify the attorney of any defect and allow sufficient time for correction. The attorney should attempt to cure the defect immediately. Any motions which do not comply with the Texas Rules of Appellate Procedure or local rules should be amended as soon as possible to comply with these rules. Failure of

an attorney to cure a defect in the record within the prescribed time or amend a motion to comply with the rules may result in sanctions against the attorney and/or dismissal of the case.

An original and three copies of briefs, motions, or any other papers directed to this Court shall be filed, unless otherwise requested by this Court.

The Court will accept non-voluminous, routine motions transmitted by facsimile machine. Such motions will be considered "filed" as of the date of transmission, if they comply with all applicable rules. The Court will not be responsible for events which disrupt, impair, or render impossible the receipt of motions transmitted by facsimile machine. Motions may be transmitted both during and after normal working hours. The party transmitting a motion by facsimile machine to the Court shall notify the opposing party by facsimile machine, if possible, in addition to proper service of the motion. The sender shall forward the original of such motion, any required copies, and filing fees to the Court on the same day the motion has been sent to the Court by facsimile machine.

Any costs or monies tendered to this Court should be paid by check. The checks directed to this Court should be made payable to the Clerk of the Court of Appeals. In connection with this rule, the Court will charge for checks returned by the bank, and the appeal will be subject to dismissal for failure to tender the proper fees.

The cost for making copies of opinions, briefs, motions, letters, or any other papers in this Court is \$1.00 per page. The minimum fee for certification of a document is \$5.00, or \$1.00 per page if in excess of five pages.

When papers are filed prior to the filing of the record, (for example, a motion for extension of time to file the record), the certificate of service should include opposing counsel's complete name and address.

Pursuant to Tex. R. App. P. 18(d), when any portion of the record is checked out, the record must be returned in the same condition in which it was received; otherwise, counsel may be required to have it recertified by the proper trial court official. Do not disassemble any portion of the record. A person commits an offense if he intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record. Texas Penal Code Ann. §§ 37.10.

All persons wishing to see a Judge or Court employee should remain in the reception area until permission is granted to enter the Court's chambers.

There will be no smoking. Public smoking is prohibited by Corpus Christi City Ordinance except in designated areas. There is no designated area for public smoking on the tenth floor.

CRIMINAL (ADDITIONAL PROVISIONS):

An attorney appointed or retained to represent a defendant in a criminal case shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the trial judge grants the attorney's timely motion to withdraw as counsel by signed, written order, or the attorney is otherwise relieved of his duties by the trial or appellate court or replaced by other counsel. Art. 26.04, Texas Code of Criminal Procedure; *Ex parte Axel*, 757 S.W.2d 369 (Tex. Crim. App. 1988).

For a discussion of indigent appeals, please see *Abdnor v. State*, 712 S.W.2d 136 (Tex. Crim. App. 1986).

III. MOTIONS Tex. R. App. P. 4(g), 19, 73

All motions should be supported by an affidavit and should contain a certificate of service.

The Court normally does not rule on any motion before the expiration of ten days. This gives the opposing party an opportunity to reply. However, if the opponent joins in the motion before the expiration of ten days, the Court may consider the motion without further delay. If an attorney opposes a motion, such opposition should be accompanied by a short brief citing supporting authorities. Only in rare instances will the Court permit a hearing on a motion. Ordinarily, motions are ruled on and the attorneys are notified of the rulings by letter. Proposed orders should not be submitted by attorneys, unless requested.

The Court normally does not grant extensions in excess of that which is prayed for, and in many instances, will shorten the length of time requested. Therefore, the attorneys should not wait for a ruling by the Court, but should meet all deadlines and perform all other action in the time and manner requested in their motions at the earliest possible date. Motions should state an accurate estimate of the time necessary for completion of the document and should comply with Tex. R. App. P. 73.

Whenever a document may be filed as a matter of right, there is no need to accompany the document with a motion for leave to file it. However, such a motion must accompany documents offered for filing after the filing date has passed. If the motion for leave is granted by this Court, then the document will be marked "filed" as of the date of its initial receipt, unless otherwise stated.

When an extension of time is requested for filing the transcript, the facts relied upon to reasonably explain the need for an extension must be supported by the affidavit of the county or district clerk or any designated representative which shall include the clerk's estimate of the earliest date when the transcript will be available for filing.

When an extension of time is requested for filing the statement of facts, the facts relied upon to reasonably explain the need for an extension must be supported by a detailed affidavit of the court reporter. See Tex. R. App. P. 73(i). If the statement of facts is not timely filed or a timely motion pursuant to Tex. R. App. P. 54(c) is not filed and granted, the appeal will be submitted on the transcript alone. See Tex. R. App. P. 53(m) and 54(a).

The Court prefers that motions for extensions of time to file briefs be filed on or before the time for filing the brief has expired. The motion should comply with Tex. R. App. P. 73.

IV. BRIEFS Tex. R. App. P. 74.

Adherence to the briefing rules set forth in the Texas Rules of Appellate Procedure will be strictly enforced.

All briefs should be short and succinct. The Court requires the briefs to be typed with 10-point (pica) letter-quality type, on 8-1/2 inch by 11 inch bond paper, double spaced, on one side of the paper and fastened on the left side. All pages shall have margins of at least one inch at the top, bottom, and each side.

Appellate briefs in civil and criminal cases shall not exceed fifty pages, exclusive of pages containing the table of contents, index of authorities, points of error, and any addendum containing statutes, rules, regulations, etc. The Court may, upon motion, permit a longer brief. A court of appeals may direct that a party file a brief, or another brief, in a particular case. If any brief is unnecessarily lengthy or not prepared in conformity with these rules, the Court may strike the brief.

If any party desires oral argument, **THAT PARTY** shall file a request for argument at the time of the filing of the brief. Pursuant to Tex. R. App. P. 75(f), a party to the appeal desiring oral argument shall file a request therefor at the time he files his brief in the case. The request for argument should be typed on the bottom left-hand corner of the brief. Failure of a party to file a request at the proper time shall be deemed a waiver of his right to oral argument in the case.

Reply briefs may be filed as a matter of right up to the date of submission and oral argument. However, reply briefs must be only in reply to the opponent's brief and must adhere to the briefing rules in the Rules of Appellate Procedure.

The Court welcomes a letter with additional or recent citations at any time without leave of court. If, however, a party wishes to amend or supplement his brief in any other manner, or to file a post-submission brief, the party must first obtain leave of court. Normally, new points of error will not be allowed subsequent to submission of the case to the Court.

During oral argument, the Court may request additional briefs. Such brief must be filed at the time stated by the Court or, if no time is specified, within ten days after oral argument. The opposing party may file a reply to such brief within ten days after the filing of such brief.

This Court requires that citations conform to the current Texas Rules of Form, published by the Texas Law Review. Writ and petition history should always be included. The Court does not require the parallel Texas Report citations.

V. SUBMISSION AND ORAL ARGUMENT Tex. R. App. P. 75.

Submission day is usually Thursday, unless otherwise stated. Submission of a case will not be reset, except in cases of emergency.

Failure of a party to timely file a request for oral argument shall be deemed a waiver of his right to oral argument in the case.

The rights, requirements and duties with respect to oral argument are covered by Tex. R. App. P. 75.

Prior to submission, the panel hearing the case will familiarize itself with the briefs and discuss the issues presented. In an effort to make oral argument meaningful and beneficial, when announcements are requested at submission, the Court may advise the parties or their counsel the time it estimates will be appropriate for the presentation of the issues by oral argument. Should the parties or their counsel feel more or less time is needed, the Court may consider changing its estimate; otherwise, oral presentations will be limited to the time allotted.

In presenting oral argument, it is helpful to the Court for the parties to present the common sense rationale for the positions on the major points at issue rather than restate the material covered in the briefs. Repetition is generally not helpful but the ability to answer questions candidly and logically is generally beneficial.

If more than one attorney is arguing for each side, the argument time should be divided by agreement among the attorneys. If an agreement cannot be reached by the attorneys, the Court should be advised of this fact at the time the Court calls for announcements on submission day.

Cases cited during oral argument that are not contained in the original briefs must be presented to the Clerk and opposing counsel in writing. A post-submission letter with certificate of service to the Clerk is sufficient.

All attorneys are required to dress in appropriate business attire while in Court.

Attorneys are required to sign the attorney register on the Clerk's desk in the courtroom when they arrive for argument.

No photograph or sound recording is to be made in the courtroom without prior permission of the Court.

VI. APPLICATIONS FOR WRIT OF ERROR AND PETITIONS FOR DISCRETIONARY REVIEW:

Please note that two deposits must be made in civil cases. One deposit (\$50.00) is made payable to the Clerk of the Supreme Court for filing fees, and the other deposit (\$25.00) is made payable to the Clerk of the Court of Appeals for forwarding costs. No filing fees are required in criminal cases.

Pursuant to Tex. R. App. P. 101, in every criminal case the Court reviews the petition for discretionary review and summarily reconsiders its own opinion without request from counsel.

VII. CASES REMANDED FROM COURT OF CRIMINAL APPEALS

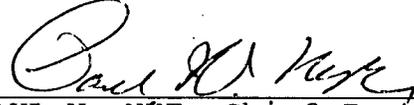
After a case is remanded to this Court from the Court of Criminal Appeals, the attorney should consider filing a supplemental brief in light of recent changes in the law. The Court welcomes further assistance from counsel at this stage. If counsel elects not to file a supplemental brief, he should notify this Court and opposing counsel of his decision not to file a supplemental brief.

VIII. NOTICE OF APPEAL IN CRIMINAL CASES

Pursuant to Tex. R. App. P. 40(b)(1), when a notice of appeal is filed, the clerk of the trial court should notify this Court of counsels' names, mailing addresses and state bar numbers. If appellant is pro se, an appropriate mailing address is needed, not

just the county jail address. If information on the notice of appeal changes, the clerk should mail an amended notice of appeal form to this Court.

APPROVED this the 18th day of June, 1991.



PAUL W. NYE, Chief Justice



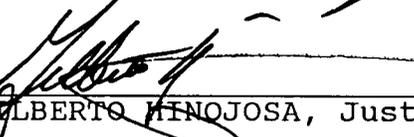
NOAH KENNEDY, Justice



ROBERT J. SEERDEN, Justice



J. BONNER DORSEY, Justice



GILBERTO HINOJOSA, Justice